

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

FAXED

MAR 24 2005

Ex parte SEAN B. WEATHERILL and
JAMES B.A. TRACEY

PAT. & T.M. OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

Application No. 09/777,420

ORDER DENYING REQUEST FOR ORAL HEARING

This application was electronically received at the Board of Patent Appeals and Interferences on November 19, 2004.

A Reply Brief was filed on October 1, 2004, along with a statement that an Oral Hearing was requested.

Effective December 1, 1997, 37 CFR § 1.194(b) was amended to provide that a request for oral hearing must be filed in a separate paper.^{1,2}

Since the appellants' request for oral hearing was not filed in a separate paper as required by 37 CFR § 1.194(b), the appellants' request for an oral hearing cannot be granted. Furthermore, the \$145.00 fee for the oral hearing fee submitted with the Notice of Appeal is refundable under 37 CFR § 1.26 since it was paid by mistake or in excess of that required.

¹ Now 37 CFR § 41.52, effective September 13, 2004. 69 Fed. Reg. 49960 (August 12, 2004).

² 37 CFR § 1.194(b) provided in pertinent part:

If appellant desires an oral hearing, appellant must file, in a separate paper, a written request for such hearing accompanied by the fee set forth in § 1.17(d) within two months from the date of the examiner's answer.

If the appellants desire the \$145.00 fee for the oral hearing fee to be refunded, a request for refund should be filed as soon as possible.

If the appellants still desire an oral hearing, a petition under 37 CFR § 1.183 must be filed **within two weeks** of the facsimile transmission date of this notice. Such a petition must include (1) a request to suspend the separate paper requirement of 37 CFR § 1.194(b); (2) a showing of facts to establish that an extraordinary situation exists and that justice requires the separate paper requirement of 37 CFR § 1.194(b) be suspended or waived; and (3) be accompanied by the petition fee set forth in 37 CFR § 1.17(h). This **two week time period** for filing a petition under 37 CFR § 1.183 is not extendable under 37 CFR § 1.136(a). The failure to timely file a petition under 37 CFR § 1.183 will result in the appeal being decided without an oral hearing (i.e., on brief).³

By Order of the:

BOARD OF PATENT APPEALS
AND INTERFERENCES



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³ If the appellants decide not to file a petition under 37 CFR § 1.183, the Board of Patent Appeals and Interferences would appreciate written notice thereof so that a decision on the appeal can be expedited.